

SEPTEMBER 2010

# Foundations for Civic Impact

Advocacy and Civic Engagement Toolkit  
for Private Foundations

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# Acknowledgments



**Center for Lobbying in the Public Interest (CLPI)** is a nonprofit-sector organization dedicated to promoting, supporting and protecting nonprofit advocacy and lobbying in order to advance charitable missions and strengthen democracy.



**The Council on Foundations** is a national nonprofit association of approximately 2,000 grantmaking foundations and corporations. As a leader in philanthropy, the Council strives to increase the effectiveness, stewardship and accountability of our sector while providing our members with the services and support they need for success.



Founded in 1940, the **Rockefeller Brothers Fund** encourages social change that contributes to a more just, sustainable and peaceful world. The RBF's grantmaking is organized around three themes: Democratic Practice, Sustainable Development, and Peace and Security.

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The above organizations would like to acknowledge the valuable contributions of the following current or former staff:

<b>CLPI</b>	Rebecca E. Jones, Erin M. Moffet, Lawrence S. Ottinger and Matthew Saperstone
<b>Council on Foundations</b>	Kelly Shipp Simone
<b>Rockefeller Brothers Fund</b>	Benjamin R. Shute Jr.

Marcus S. Owens, Esq., partner at Caplin & Drysdale, provided a legal review of the content of this toolkit.

Kristen Putnam-Walkerly, MSW, president of Putnam Community Investment, provided project oversight and coordination as a consultant to CLPI.

Diane Hogg, proofreader of 19 years with McNeely Pigott & Fox Public Relations, proofread the toolkit.

Communication Visual oversaw the layout, design and printing of the toolkit. Coqui Marketing assisted CLPI in obtaining photos that were incorporated into the design.



# How to Use This Toolkit

**THIS ADVOCACY AND CIVIC ENGAGEMENT TOOLKIT** is designed for private foundations that want to educate and encourage their grantees<sup>1</sup> about getting involved in civic and policy activities to increase organizational capacity and impact. While its primary focus is on the grantmaking activity of foundations, the toolkit also addresses rules and guidance for policy involvement by foundation officials acting on behalf of their foundations.

“this advocacy and civic engagement toolkit covers not only the basic legal rules but also how foundations apply these rules”

As confirmed by a recent Johns Hopkins University study, foundations – through their guidelines, grant agreements and other communications – can inadvertently prevent or discourage their own staff and grantees from relevant and important civic participation.<sup>2</sup> To facilitate clear and positive communications, this advocacy and civic engagement toolkit covers not only the basic legal rules but also how foundations apply these rules in developing internal and external materials and guidance.<sup>3</sup>

This toolkit’s primary audience is foundation staff, boards and advisers; but it also provides useful information for charitable grantees, policymakers and other stakeholders.

The advocacy and civic engagement toolkit is organized into eight information sheets that provide:

- **Easy-to-read legal basics for foundations crafting policy-related guidance, with citations to relevant resources for those who would like to delve deeper;**
- **Practical samples of foundation materials that are consistent with IRS rules and encourage permissible civic engagement, including sample grant guidelines, agreement letters and an advocacy capacity checklist;**
- **Up-to-date rules and guidance on policy and civic engagement;**
- **Plain-language glossary and resource list; and**
- **Success stories and examples from private foundation colleagues.**

The information sheets cover the following topics, each with references to relevant resources for more in-depth inquiry.



## Toolkit Sections

1. **Why Advocacy and Civic Engagement** – four key reasons that foundations should fund and be involved in advocacy and civic engagement. Foundations engage in and support policy involvement by charities and their constituents in order to effectively carry out their shared missions and strengthen democracy.
2. **Basic Rules for Private Foundations as Grantmakers** – a brief overview of the basic legal rules for funding advocacy. It emphasizes how private foundations can support grantees that engage in lobbying, election-related activities and general advocacy.
3. **Basic Rules for Private Foundations as Advocates** – a brief overview of the basic legal rules for permissible policy involvement by private foundations and their personnel when acting on behalf of their foundations.
4. **Sample Grantmaking Guidelines** – six private foundation examples of guidelines and program descriptions that clearly encourage permissible advocacy and civic engagement.
5. **Sample Grant Agreement Letters** – two sample letters for foundations to encourage grantee civic engagement and avoid inadvertently preventing permissible advocacy. One letter omits boilerplate language on lobbying and political activity restrictions, because it is not legally required and can confuse or discourage grantees. The second letter offers an example of how to include such boilerplate language while minimizing confusion and encouraging civic engagement.
6. **Grantee Advocacy Capacity and Evaluation Checklist** – a series of questions you can use in evaluating and assisting your potential and existing grantees concerning their advocacy capacity and progress. The checklist covers an organization's advocacy capacity, experience, strategy and commitment.
7. **Success Stories** – examples of how private foundations, as grantmakers and as advocates themselves, have effectively leveraged advocacy and civic engagement strategies.
8. **General Resources** – lists the main resources for private foundations on advocacy and civic engagement rules and practices. In addition, each information sheet contains references to relevant resources for that topic.

**Appendix A: Glossary of Key Terms** – The glossary defines key terms used throughout the information sheets, and seeks to clarify the often differing language used in this area by the Internal Revenue Service (IRS), foundations, charities and the public.

**Appendix B: IRS Letter to CLPI** – In response to a request by CLPI from its attorneys at Caplin & Drysdale, this 2004 IRS letter answers 16 common questions that private foundations have about lobbying and influencing public policy.

- 1 Most foundation grantees are public charities governed by Section 501(c)(3) of the Internal Revenue Code. Thus, when this toolkit refers to grantees it is referring to public charities. While the term nonprofit also can refer to the full range of tax-exempt organizations, this toolkit uses the terms nonprofits and charities interchangeably as is often done in nontechnical communications. See Glossary of Key Terms, Appendix A. Different rules may apply to advocacy by other tax-exempt organizations that are not charities, like Section 501(c)(4) social welfare organizations. You should consult your counsel with any questions.
- 2 Salamon, Lester M. and Stephanie Lessans Geller. *Communiqué No. 9 – Nonprofit America: A Force for Democracy?* Johns Hopkins University, 2008.
- 3 These information sheets focus on the federal tax laws regulating advocacy activity by Section 501(c)(3) organizations. In some cases, additional registration or reporting requirements may be imposed by other federal, state or local agencies. Consult with your foundation's legal counsel about the rules regarding specific activities you are considering. While there are efforts to simplify and update nonprofit advocacy rules, they are beyond the scope of this toolkit.

## Legal Disclaimer

This toolkit provides helpful legal information and guidance, but should not be construed as providing specific legal advice. You should consult with your foundation's legal counsel about specific activities or questions.



# Why Advocacy & Civic Engagement?

**FOUNDATIONS ENGAGE IN AND SUPPORT** civic and policy involvement by charities and their constituents in order to effectively carry out their shared missions and strengthen democracy. Advocacy and civic engagement activities protect a foundation's investments and are an important tool in the toolbox of strategic philanthropy.

## Winter, Spring, Summer or Fall ... Four Reasons for Year-round Civic Engagement

1. It's the mission. Whether a foundation seeks to help the homeless or promote the arts, it is critical to understand and leverage public and private resources and regulatory decisions. By removing barriers and/or facilitating innovative solutions, policy and civic engagement enables foundations to address the root causes of social problems and to create lasting, systemic change.
2. It's enlightened self-interest. Private foundations are governed by public laws, and government can harm or help foundations achieve their missions. In addition, self-defense work permitted by the IRS allows private foundations to speak with legislators about issues that would affect certain aspects of foundations, such as their rights or duties. Remember, if you're not at the table, you may be on the table.
3. It's solving social problems. The nonprofit and philanthropy sector alone cannot solve society's most pressing challenges. It must partner with government and businesses, and also hold them accountable, in order to create systemic change. Whether they relate to human services, civil rights, economic security, education or the environment, nonprofit advocacy and civic engagement activities have been critical to large-scale social progress from the beginnings of our nation.
4. It's democracy. An informed and responsive democracy requires that a wide range of voices and interests be heard in shaping and implementing public policy. Private foundations have knowledge and expertise that policymakers want and need to make government work. Nonprofits are well-positioned to experiment, innovate, evaluate and educate. Nonprofits are among our nation's best vehicles for civic participation, which is the cornerstone of our nation of, by and for the people.

**“An informed and responsive democracy requires that a wide range of voices and interests be heard in shaping and implementing public policy.”**

**To paraphrase Robert F. Kennedy, the real question is not why to engage but why not.**

## FOUNDATIONS FOR CIVIC IMPACT

### Advocacy and Civic Engagement Toolkit for Private Foundations



## Additional Resources

Alliance for Justice and Council on Foundations. *Words to Give by: Leading Voices in Funding Advocacy*. 2008. <http://www.afj.org/nonprofits-foundations/resources-and-publications/free-resources/words-to-give-by.html>

Arons, David F. (Ed.) *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*. St. Paul, Minn.: Fieldstone Alliance, 2007.

Atlantic Philanthropies, The. *Investing in Change: Why Supporting Advocacy Makes Sense for Foundations*. 2008. [http://www.atlanticphilanthropies.org/sites/default/files/uploads/ATLP\\_advocacy\\_report.pdf](http://www.atlanticphilanthropies.org/sites/default/files/uploads/ATLP_advocacy_report.pdf)

Center for Lobbying in the Public Interest. 10 Reasons to Lobby for Your Cause. 2007. [http://www.nadsa.org/assets/library/479\\_10reasonstolobby.pdf](http://www.nadsa.org/assets/library/479_10reasonstolobby.pdf)

Center for Lobbying in the Public Interest. *Make a Difference for Your Cause: Strategies for Nonprofit Engagement in Legislative Advocacy*. 2006. [http://www.clpi.org/images/stories/content\\_img/Make\\_a\\_Difference\\_RG\[1\].pdf](http://www.clpi.org/images/stories/content_img/Make_a_Difference_RG[1].pdf)

Grantcraft. *Advocacy Funding: The Philanthropy of Changing Minds*. 2005. <http://www.grantcraft.org/index.cfm?fuseaction=Page.viewPage&pageID=734>

Leighninger, Matt of Deliberative Democracy Consortium. *Funding and Fostering Local Democracy: What Philanthropy Should Know About the Emerging Field of Deliberation and Democratic Governance*. PACE (Philanthropy for Active Civic Engagement). April 2009. <http://www.pacefunders.org/publications/FundingLocalDemocracy.pdf>

National Committee for Responsive Philanthropy. *Strengthening Democracy, Increasing Opportunities: Impacts of Advocacy, Organizing and Civic Engagement in Minnesota (September 2009), New Mexico (December 2008), North Carolina (May 2009), Los Angeles (2010)*. <http://www.ncrp.org/campaigns-research-policy/communities/gcip>

Northern California Grantmakers. *Public Policy Grantmaking Toolkit*. <http://www.publicpolicytoolkit.org/home.html>

Simone, Kelly Shipp. *Top 10 Ways Private Foundations Can Influence Public Policy*. Arlington, VA.: Council on Foundations. 2007.

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# Basic Rules for Private Foundations as Grantmakers

**THE FOLLOWING IS INTENDED TO PROVIDE** private foundation staff, board and their advisers with a brief overview of the basic legal rules for funding advocacy by charity grantees. The two primary areas of nonprofit advocacy that are regulated by the IRS are lobbying and voter engagement activities. Foundations may generally fund unlimited advocacy and civic engagement activities by grantees that do not fall under specific prohibitions or restrictions within these two areas.

## Lobbying

**Private foundations may:**

- ✓ Make general support grants to Section 501(c)(3) public charities that engage in lobbying.<sup>4</sup>
- ✓ Make project-specific grants to Section 501(c)(3) public charities for projects that include lobbying activities so long as:
  - The grants are not earmarked for lobbying (i.e., not made with an oral or written agreement to be used for lobbying);
  - The total grant amount does not exceed the amount budgeted by the charity for nonlobbying activities as stated in a signed project budget; and
  - The private foundation has no reason to doubt the accuracy of the project budget. Private foundations need not concern themselves that the grantee may seek funding from other foundations for the same project. (See 2004 IRS Letter to CLPI, Appendix B.)
- ✓ Make project-specific grants to Section 501(c)(3) public charities for legislative communications comprising specific exceptions to the charitable lobbying rules including:
  - Nonpartisan analysis, study or research;
  - Technical assistance requested in writing by a government body; and
  - Self-defense communications with legislators on matters affecting the organization's existence (but not its budget), tax-exempt status, powers and duties, or deductibility of contributions to the organization.

**Private foundations may not:**

- ✗ Earmark grants to public charities specifically for lobbying (i.e., make a written or oral agreement that its grant be used for lobbying) without incurring prohibitive taxable expenditures.

## Voter Engagement Activities

**Private foundations may:**

- ✓ Make general support and project-specific grants to Section 501(c)(3) public charities that engage in a wide range of nonpartisan voter education and engagement activities, including nonpartisan voter registration, get-out-the-vote, voter guides, issue advocacy and candidate forums.<sup>5</sup>
- ✓ Earmark grants for nonpartisan voter registration to a public charity grantee if the grantee conducts registration in five or more states and over more than one election cycle, along with other conditions on the sources of funds and targeting of registration for impartiality.

**Private foundations may not:**

- ✗ Fund charities to engage in partisan political activities (e.g., supporting or opposing a candidate for public office or a political party). The IRS determines whether particular voting-related activities are nonpartisan and permissible by examining the "facts and circumstances" of each case.<sup>6</sup>
- ✗ While this area currently lacks safe harbors and is case-specific, the following are three general prohibitions on private foundations and their charitable grantees:
  - Making direct or indirect communications for or against a candidate for public office or a political party;
  - Supporting or opposing a candidate for public office or a political party; and
  - Coordinating activities with a candidate for public office or a political party.
- ▶ These rules apply to federal, state and local elections. Federal, state and local election laws may provide other rules related to registration, disclosure and other activities within their jurisdictions.





## General Advocacy is Legal and Unlimited

- Advocacy and civic engagement that is not regulated by the IRS as lobbying or partisan political activity is generally permissible and unlimited for private foundations and their grantees.
- Such permissible activities include but are not limited to public education, community organizing, grassroots organizing (unlimited without a legislative call to action), issue or policy advocacy (including through media and coalitions), and nonpartisan voter education and engagement as discussed above.
- Private foundations may fund grantees to support or oppose federal administrative regulations, litigation and other nonlegislative governmental action, as well as private-sector decisions.<sup>7</sup>
- Private foundations may support charities to provide or receive training and technical assistance on permissible lobbying, voter engagement, and other aspects of advocacy and civic engagement.

- 4 Grants to a narrow class of public charities – certain Internal Revenue Code Section 509(c)(3) supporting organizations – require a private foundation to follow the expenditure responsibility rules. In such narrow cases, the grant agreement should include a prohibition on the use of grant funds for lobbying or voter registration activity.
- 5 Support to charities working for or against ballot measures is treated by the IRS as direct lobbying with the public serving as the legislative body. Thus, the lobbying rules apply to the way private foundations may support such charitable activities. In addition, see footnote 4 regarding grants to certain supporting organizations.
- 6 The 2010 Supreme Court decision in *Citizens United v. FEC* may require the IRS or Congress to adopt some clearer rules in the future for determining permissible political activities.
- 7 State laws may exist with respect to administrative and other forms of advocacy, so you should check with your counsel if you have any questions.

## Legal Disclaimer

This toolkit provides helpful legal information and guidance, but should not be construed as providing specific legal advice. You should consult with your foundation's legal counsel about specific activities or questions.



## Additional Resources

Alliance for Justice. *Investing in Change: A Funders Guide to Supporting Advocacy*. May 2007.

Center for Lobbying in the Public Interest. *Make a Difference for Your Cause: Strategies for Nonprofit Engagement in Legislative Advocacy*. 2006. [http://www.clpi.org/images/stories/content\\_img/Make\\_a\\_Difference\\_RGI1.pdf](http://www.clpi.org/images/stories/content_img/Make_a_Difference_RGI1.pdf)

Fei, Rosemary E. and David A. Levitt of Adler & Colvin and Laurance E. Gold of Lichtman, Trister & Ross. *Rules of the Game: A Guide to Election-related Activities for 501(c)(3) Activities (Second Edition)*. Washington, D.C.: Alliance for Justice, 2010.

Kindell, Judith E. and John Francis Reilly. "Election Year Issues." IRS Exempt Organization Technical Instruction Program for PY 2002. Available at <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>

Kindell, Judith E., and John Francis Reilly. "Lobbying Issues." IRS Exempt Organization Technical Instruction Program for FY 1997. Available at <http://www.irs.gov/pub/irs-tege/eotopicp97.pdf>

Mayer, Esq., Lloyd H. "The Legal Rules for Public Policy and Civic Impact by Foundations" in Arons, David F. (Ed.). *Power in Policy: A Funder's Guide to Advocacy and Civic Participation* (pp.169-205). St. Paul, Minn.: Fieldstone Alliance, 2007.

Nonprofit Voter Engagement Network. *Nonprofits, Voting and Elections: Guidelines for 501(c)(3) Organizations on Nonpartisan Voter Engagement*, Revised 2010.

Nonprofit Voter Engagement Network. *A Voter Participation Starter Kit for Nonprofits and Social Service Agencies*, 2010.

Nonprofit Voter Engagement Network. *A Nonprofit's Guide to Hosting a Candidate Forum*. Revised 2010.

Northern California Grantmakers. *Public Policy Grantmaking Toolkit*. 2005. <http://www.publicpolicytoolkit.org/home.html>

Simone, Kelly Shipp. *Top 10 Ways Private Foundations Can Influence Public Policy*. Arlington, VA.: Council on Foundations, 2007.

Simone, Kelly Shipp and Jane C. Nober. "Election Year Politics." *Foundation News & Commentary*. 45, no. 4 (July/August 2004). <http://www.foundationnews.org/CME/article.cfm?ID=2956>

Troyer, Thomas A., Douglas N. Varley and Vivian L. Cavaliere of Caplin & Drysdale. *Voter Education, Registration and Ballot Campaigns: A Funders Guide to Legal Issues*. Funders' Committee for Civic Participation. December 2005. [http://funderscommittee.org/resource/voter\\_education\\_registration\\_and\\_ballot\\_campaigns\\_a\\_funders\\_guide\\_to\\_legal\\_issues](http://funderscommittee.org/resource/voter_education_registration_and_ballot_campaigns_a_funders_guide_to_legal_issues)

# Basic Rules for Private Foundations as Advocates

**THE FOLLOWING INFORMATION IS INTENDED** to provide private foundation staff, board and their advisers with a brief overview of the basic legal rules for permissible activities when the foundation and its personnel advocate on behalf of the foundation. Foundation personnel may participate in lobbying, politics and other aspects of the democratic process in their personal capacity and time.<sup>8</sup>

The two primary areas of nonprofit advocacy that are regulated by the IRS are lobbying and voter engagement activities. Foundations and their personnel generally may engage in unlimited advocacy and civic engagement that does not fall within specific prohibitions or restrictions within these two areas.

## Lobbying

**Private foundations<sup>9</sup> may:**

- ✓ Engage in legislative communications comprising specific exceptions to the charitable lobbying rules, including:
  - Nonpartisan analysis, study or research;
  - Technical assistance requested in writing by a government body; and
  - Self-defense communications on matters affecting the organization's existence (not its budget), tax-exempt status, powers and duties, or deductibility of contributions to the organization; and
  - Communications with government officials about projects funded jointly by the private foundation and government.

**Private foundations may not:**

- ✗ Engage in lobbying as defined by the IRS without incurring prohibitive taxable expenditures (i.e., supporting or opposing specific legislation directly to a legislative body or indirectly through a public call to action).

## Voter Engagement Activities

**Private foundations may:**

- ✓ Engage in a wide range of *nonpartisan* voter education and engagement activities, including nonpartisan voter registration, get-out-the-vote, voter guides, issue advocacy and candidate forums. Depending on the type of activity, foundation officials may be subject to certain conditions to ensure impartiality in the democratic process.
- ✓ Engage in nonpartisan voter registration if it does so in five or more states and over more than one election cycle, along with other conditions on the sources of funds and targeting of registration for impartiality.

**Private foundations may not:**

- ✗ Engage in partisan political activities (e.g., supporting or opposing a candidate for public office or political party). The IRS determines whether particular voting-related activities are nonpartisan and permissible by examining the "facts and circumstances" of each case.<sup>10</sup>
- These rules apply to federal, state and local elections. Federal, state and local election laws may provide other rules related to registration, disclosure and political activities within their jurisdictions.



## General Advocacy is Legal and Unlimited

- Advocacy and civic engagement activities that are not regulated under the law as lobbying or partisan political activity are generally permissible and unlimited for private foundations and their personnel.
- Such permissible activities include but are not limited to public education, community organizing, grassroots organizing (without a legislative call to action), issue or policy advocacy (including through media and coalitions), and nonpartisan voter education and engagement (see above in this information sheet).
- Private foundations may support or oppose federal administrative regulations, litigation, and other nonlegislative governmental actions, as well as private-sector decisions.<sup>11</sup> In addition, private foundations can support or oppose legislation that falls within one of the specific exceptions to the IRS charitable lobbying rules, which are described above in this information sheet.

- 8 Foundation personnel, particularly senior foundation executives and board members, should be careful to distinguish their actions as individuals from actions taken as representatives of their foundations.
- 9 The term private foundation is used for editorial simplicity here and in the rest of this information sheet to mean foundations and their personnel when acting on behalf of their foundations.
- 10 The Supreme Court decision in *Citizens United v. FEC* may require the IRS to adopt some clearer rules in the future for determining prohibited political activities.
- 11 State laws may exist with respect to administrative and other nonlegislative forms of advocacy, and you should check with counsel if you have questions.



## Additional Resources

Alliance for Justice. *Investing in Change: A Funders Guide to Supporting Advocacy*. May 2007.

Council on Foundations. *What You Need to Know: Getting Involved in Public Policy*. January 2008. <http://www.cof.org/templates/311.cfm?ItemNumber=16207&navItemNumber=14849>

Council on Foundations and Forum of Regional Associations of Grantmakers. *Foundations on the Hill*. [www.foundationsonthehill.com](http://www.foundationsonthehill.com)

Fei, Rosemary E. and David A. Levitt of Adler & Colvin; and Laurance E. Gold of Lichtman, Trister & Ross. *Rules of the Game: A Guide to Election-related Activities for 501(c)(3) Activities (Second Edition)*. Washington, D.C.: Alliance for Justice, 2010.

Mayer, Esq., Lloyd H. "The Legal Rules for Public Policy and Civic Impact by Foundations" in Arons, David F. (Ed.) *Power in Policy: A Funder's Guide to Advocacy and Civic Participation* (pp.169-205). St. Paul, Minn.: Fieldstone Alliance, 2007.

Minnesota Council on Foundations. *Advocacy Toolkit: Strategies for Engaging Foundations in Advocacy*. 2007. [http://www.mcf.org/mcf/resource/publicpolicy/advocacy\\_toolkit.pdf](http://www.mcf.org/mcf/resource/publicpolicy/advocacy_toolkit.pdf)

Northern California Grantmakers. *Public Policy Grantmaking Toolkit*. 2005. <http://www.publicpolicytoolkit.org/home.html>

Simone, Kelly Shipp. *Top 10 Ways Private Foundations Can Influence Public Policy*. Arlington, VA.: Council on Foundations. 2007.

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# Sample Grantmaking Guidelines

Private foundations can help grantseekers by making it clear in their program descriptions and proposal guidelines that they are interested in supporting public policy and civic engagement. Below are six examples of helpful language currently being used by private foundations in their grantmaking guidelines or on their websites. These examples describe either a distinct civic engagement program area or grantee activities that are encouraged and integrated within a foundation's substantive issue area. These represent just a sample of instructive foundation guidelines in this arena.

## 1. HYAMS FOUNDATION: CIVIC ENGAGEMENT INITIATIVE<sup>12</sup>

### Voter engagement, public policy advocacy and community organizing

Voting is the fundamental way for people to exercise their individual and collective power and ensure that public policies are reflective of and responsive to diverse communities. ... The foundation supports a funders' collaborative at a community foundation which funds an intermediary organization, MassVOTE. MassVOTE re-grants and provides technical assistance to community-based organizations that:

- Incorporate effective voter registration and Get Out The Vote (GOTV) efforts to increase voter engagement in targeted low-income communities of color;
- Work collaboratively to hold candidate forums in the communities to encourage candidates to address issues of concern to community residents; and
- Work with MassVOTE to train staff on effective GOTV strategies and track the actual work and effectiveness in turning out the vote.

Public policies can promote or inhibit the civic engagement of teens and adults from low-income communities of color. A number of public policy issues are of particular concern. These include "racial profiling" by public agencies, efforts to increase identification requirements and other barriers for voting and registration, the escalation of anti-immigrant sentiment, and the increasing number of federal Immigration and Customs Enforcement raids in immigrant communities. These and other actions contribute to an escalation of fear, civic disengagement and disenfranchisement within communities of color. To help counter this, the Foundation will support advocacy and organizing that have the potential to change public policy and increase resources to maintain civil rights and promote greater civic engagement. Some examples of possible public policy

goals include but are not limited to: same-day registration and voting; lowering the voting age to 16 for local elections to expand the civic engagement of teens; allowing immigrants to vote in municipal elections and referendums; increasing funding for citizenship education funding; and incorporating civic engagement curricula in public education.

### Civic engagement/public policy/community organizing grants will be made to organizations that have:

- A demonstrated commitment to broad-based constituent engagement, mobilization and coalition building;
- An understanding of the legislative process; and
- Relationships with key allies in elected office that will help to pursue public policy changes.

## 2. THE JAMES IRVINE FOUNDATION: DEMOCRACY PROGRAM AREA<sup>13</sup>

### Governance Reform and Civic Innovation

To reach our goal, we believe two kinds of change are needed. First, the governing system must be reformed to better ensure that policy decisions are made fairly, with a long-term view and based on sound information. ... Second, a more representative set of Californians must actively participate in decision-making processes. ... Throughout our work, we emphasize a nonpartisan, problem-solving approach and engagement with a diverse array of populations.

- Governance Reform – We make grants to improve state and local governance in three areas: budget and fiscal systems, election policies and practices, and the state redistricting process. In these areas, we support policy development, strategic communications, outreach, coalition building and other activities.





- Civic Engagement – We make grants to increase opportunities for civic engagement among historically underrepresented communities, including low-income, ethnic and immigrant populations. We support innovative approaches and new mechanisms for involving diverse communities in public decision making. And we have a special focus on civic engagement in the San Joaquin Valley and Inland Empire.

Democracy program area

**Grantee:** Liberty Hill Foundation

**Amount:** \$1,200,000

**Project:** To support re-granting and capacity building for civic engagement projects designed to improve social and economic conditions within Los Angeles' disadvantaged communities.

### 3. ANNIE E. CASEY FOUNDATION: FOR ALL PROGRAM AREAS<sup>14</sup>

#### Demonstrating policy innovations

In general, the grantmaking of the Annie E. Casey Foundation is limited to initiatives in the United States that have significant potential to demonstrate innovative policy, service delivery, and community supports for disadvantaged children and families. Most grantees have been invited by the Foundation to participate in these projects.

### 4. CHARLES STEWART MOTT FOUNDATION: EDUCATION PROGRAM AREA<sup>15</sup>

#### Policy development and advocacy to increase sustainability of programs

Our first funding strategy [in Learning Beyond the Classroom] is to generate and disseminate information about promising practices and programs focused on improving outcomes for children and youth. ...

The second strategy is to increase the sustainability of after-school programs through policy development, communications, advocacy and support for communities. Grantmaking focuses on afterschool programs as a means toward expanding and sustaining community/school partnerships in support of improved outcomes for children and youth. Grants are clustered in:

- policy development and advocacy – helping decision makers develop and implement local, state and national afterschool policies that emphasize sustainable systems of support; and
- communications – building public awareness about the importance of expanded resources for afterschool programs and raising public will to support them financially.

### 5. FORD FOUNDATION: EDUCATION PROGRAM AREA<sup>16</sup>

#### Policy reform and the creation of new policies

Despite some progress worldwide over the past few decades in making higher education more accessible, disparities persist in students' access to and graduation from two- and four-year colleges and universities. These disparities limit the work force opportunities, democratic participation and life chances of students from poor, marginalized backgrounds. Our work seeks to generate policy and institutional reforms that improve standards of teaching and learning and remove the barriers to successful participation in higher education in the United States, the Andean Region and Southern Cone, Brazil, China, Egypt, and Southern Africa. In the United States, it will focus on establishing stronger links between two- and four-year colleges; creating robust tuition and financial aid policies geared to the needs of disadvantaged and working students; and scaling up effective remedial and developmental education programs. Similarly, our work in other parts of the world supports reforms that make higher education institutions more accessible to students from excluded backgrounds and that provide financial and academic support.

Education program area

**Grantee:** Advocates for Children and Youth, Inc.

**Amount:** \$125,000

**Project:** To engage in public education and advocacy efforts to support juvenile justice reform.

**“Our work seeks to generate policy and institutional reforms that improve standards of teaching and learning...”**



## 6. OPEN SOCIETY INSTITUTE–BALTIMORE: CRIMINAL AND JUVENILE JUSTICE<sup>17</sup>

### Public education, advocacy and the development of new policies to improve systems

The Criminal Justice Program seeks to fund programs that will encourage policies and practices that reduce juvenile crime and incarceration. ... To provide constructive alternatives to juvenile incarceration, the Program will fund organizations that advocate for the development of a network of appropriate community-based programs for juveniles. Projects could include efforts to study the cost-effectiveness and availability of community-based programs and to publicize model programs. The Program will also fund public education and policy advocacy to ensure that the juvenile justice system offers more diversion programs for juvenile offenders. Appropriate community-based programs will provide the treatment and other vital support services juveniles need to help them avoid continued involvement with the criminal justice system.

... Grants focus on organizations that engage in public education and advocacy to encourage systemic reform that reduces incarceration. For instance, reforms could include increasing the use of diversion or community-based alternatives to incarceration, or improving parole policies and practices in order to shorten certain prison terms and reduce re-incarceration. As opportunities arise, the Program also assists public agencies in their efforts to design and implement systemic reform efforts. Other initiatives seek to infuse public debate on crime with a broader discussion of the causes of incarceration and effective strategies to reduce crime and recidivism.

**Grantee:** Campaign for College Opportunity

**Amount:** \$400,000

**Project:** For public education and policy research and to build a bipartisan statewide coalition of business, labor, education, community and higher education to promote expanded college access in California.

“Grants will focus on organizations that engage in public education and advocacy to encourage systemic reform that reduces incarceration.”

12 Hyams Foundation <http://www.hyamsfoundation.org/2009%20Addition%20to%20website/New%20Grantmaking%20Guidelines%20&%20Chart%202009%20v2.pdf>

13 The James Irvine Foundation <http://www.irvine.org/grantmaking/our-programs/californiademocracy>

14 Annie E. Casey Foundation <http://www.aecf.org/AboutUs.aspx>

15 Charles Stewart Mott Foundation <http://mott.org/about/programs/pathwaysoutofpoverty/improvingcommunityeducation.aspx>

16 Ford Foundation <http://www.fordfoundation.org/issues/educational-opportunity-and-scholarship>

17 Open Society Institute–Baltimore [http://www.soros.org/initiatives/baltimore/focus\\_areas/a\\_criminal\\_justice/guidelines](http://www.soros.org/initiatives/baltimore/focus_areas/a_criminal_justice/guidelines)

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# Sample Grant Agreement Letter (without IRS language)

The following is a sample grant agreement letter from a private foundation to a Section 501(c)(3) public charity.<sup>18</sup> Many foundations mistakenly believe that they are legally required to state IRS lobbying and political activity restrictions. In doing so, foundations can inadvertently confuse, intimidate or even legally restrict grantees from engaging in lawful and important advocacy for their constituents and causes. This is not necessary. See 2004 IRS Letter to CLPI, Appendix B.

The below sample grant agreement letter does not include IRS language on advocacy-related restrictions, just the basic requirements for a general support grant.<sup>19</sup> [Specific language for a project or restricted grant is in brackets.] As with any sample or template, this is designed to serve as a starting place. Foundations should work with their advisers to tailor the template to meet their particular needs.

Dear Ms. Grantee:

I am pleased to inform you that the ABC Foundation approved a grant of \$60,000 to the XYZ charity designated as a contribution to general support [or for the purpose of the project as described in your attached proposal and budget]. The grant period will be 12 months, and the award will be made in a single payment upon the execution of this agreement. By signing this letter, the grantee agrees to the following terms:

- That all grant funds will be used solely for charitable, religious, scientific or educational purposes as described in Section 170(c)(2)(B) of the Internal Revenue Code.
- To continue to qualify as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code – and not as a private foundation as defined in section 509(a) of the Code – and that it will notify the Foundation immediately if the Internal Revenue Service proposes to revoke or change the grantees exempt status.
- [For a project specifically for voter registration, the activities must be nonpartisan and the charitable grantee must conduct registration in five or more states and over more than one election cycle, along with other conditions on the sources of funds and ensuring impartiality in any targeting of registration.]
- (Any other desired conditions, such as reporting requirements; repayment of funds not used in compliance with either of the first two conditions; or access to financial records)

Please return the signed letter to the Foundation in order to indicate your acceptance of the terms of this agreement.

Best Wishes,

18 This letter would not be sufficient in the case of a grant to a supporting organization which requires expenditure responsibility. See [www.cof.org/ppa](http://www.cof.org/ppa) for more information.

19 This letter was adapted with permission from sample letters by Lloyd H. Mayer, Esq., in *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*, Appendix A at pp. 228-231.



## Additional Resources

Mayer, Esq., Lloyd H. in Arons, David F. (Ed.). *Power in Policy: A Funder's Guide to Advocacy and Civic Participation* (Appendix A, pp.228-231). St. Paul, Minn.: Fieldstone Alliance, 2007.

Setterberg, Fred and Colburn S. Wilbur. *The Complete Guide to Grantmaking Basics: A Field Guide for Funders*. Arlington, VA.: Council on Foundations and The David and Lucile Packard Foundation, 2008.

## Legal Disclaimer

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# Sample Grant Agreement Letter (with IRS language)



The following is a sample grant agreement letter from a private foundation to a Section 501(c)(3) public charity. Some foundation executives, boards or counsel may feel more comfortable with grant agreements that state specific IRS lobbying and political activity restrictions. At the same time, these foundations may not want to inadvertently prohibit or discourage lawful advocacy and civic engagement by their grantees.

The following is a sample general support grant agreement letter that includes IRS language on lobbying and political activity restrictions while at the same time minimizing confusion and encouraging permissible advocacy and civic engagement.<sup>20</sup> [Specific language for a project or restricted grant is in brackets.]<sup>21</sup>

Dear Ms. Grantee:

I am pleased to inform you that the ABC Foundation approved a grant of \$60,000 to the XYZ public charity designated as a contribution to general support [or for the purpose of the project as described in your attached proposal and budget]. The grant period will be 12 months, and the award will be made in a single payment upon the execution of this agreement. By signing this letter, the grantee agrees to the following terms:

- That all grant funds will be used solely for charitable, religious, scientific or educational purposes as described in Section 170(c)(2)(B) of the Internal Revenue Code.
- To continue to qualify as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code -- and not as a private foundation as defined in section 509(a) of the Code -- and that it will notify the Foundation immediately if the Internal Revenue Service (IRS) proposes to revoke or change the grantees exempt status.
- There is no agreement, oral or written, that directs that the grant funds be used for lobbying activities. The grantee has the right to engage in lobbying that does not exceed limits imposed by Internal Revenue Code Section 501(c)(3) or, if applicable, Sections 501(h) and 4911. Grantee also may engage in unlimited, nonpartisan policy activities that are not lobbying or that constitute an exception to lobbying as defined by Section 501(c)(3).
- No funds may be used for partisan political activities, which are prohibited under Section 501(c)(3). However, grantee may engage in unlimited nonpartisan voter education and engagement activities consistent with the law.
- [For a project specifically for voter registration, the activities must be nonpartisan and the charitable grantee must conduct registration in five or more states and over more than one election cycle, along with other conditions on the sources of funds and ensuring impartiality in any targeting of registration.]
- (Any other desired conditions, such as reporting requirements; repayment of funds not used in compliance with any of the previous conditions or the project; or access to financial records)

Please return the signed letter to the Foundation in order to indicate your acceptance of the terms of this agreement.

Best wishes,

<sup>20</sup> Grants made to certain supporting organizations may require the foundation to exercise expenditure responsibility. For any such grant, a foundation should consult its counsel concerning the grant agreement language.

<sup>21</sup> This letter was adapted with permission from sample letters by Lloyd H. Mayer, Esq., in *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*, Appendix A at pp. 228-231.

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# Grantee Advocacy Capacity & Evaluation Checklist

When considering or evaluating a grant to a nonprofit to engage in advocacy or civic engagement, it is important to be able to assess a nonprofit organization's capacity, experience and commitment in this strategic area. Below is a series of questions that staff, and other relevant organization representatives, can use in discussions and site visits with potential and existing grantees concerning their advocacy capacity and progress.

Not all questions will be applicable, and many qualified grantees will be at varying stages of advocacy activity both within and outside of their organizations. We hope these questions encourage dialogue between you and your grantees, as well as help to identify areas where your support can build grantee advocacy capacity to meet your shared goals for change.

## Advocacy Goals and Agenda

- ☐ To what extent is advocacy a clear part of your organization's mission, goals and strategy?
- ☐ Do you have a written advocacy agenda?
  - Is this agenda based on research and policy analysis, including stakeholder interviews?
  - Did you involve your constituency (the community impacted by this policy) in its development?
- ☐ What are your advocacy goals and objectives?
- ☐ Do you have a plan for achieving your advocacy agenda?
- ☐ How will you measure progress?

## Leadership and Will

- ☐ To what extent is your board engaged in and committed to advocacy?
  - Is the board's role in advocacy clearly defined?
  - Has it approved your advocacy agenda?
- ☐ To what extent is executive leadership engaged in and committed to advocacy?
  - What role does the executive director play?
- ☐ What organizational structures are in place to support advocacy (e.g., a public policy committee, an advisory committee, a board committee, etc.)?
- ☐ What is your decision-making process for public policy issues?
- ☐ How long has your organization been engaged in policy advocacy efforts?
- ☐ What board, staff and other organizational resources are committed to your advocacy plan?

## Management

- ☐ Which employees are responsible for advocacy?
  - What are their qualifications?
- ☐ Are staff advocacy roles clearly defined?
- ☐ Do you have a "rapid response" team in place to make quick decisions in response to rapidly changing conditions?
- ☐ What percentage of your operating budget is designated for policy advocacy?
- ☐ In what ways are you challenged from a staffing or resource standpoint?

## Strategy, Strategic Partnerships and Networks

- ☐ What strategic partnerships, networks or coalitions are you involved with?
  - How do these networks help you meet your advocacy goals?
  - What kinds of training, technical assistance and coordination do these networks provide to you?
  - What role does your organization play in these networks?
  - How does your policy agenda fit into the broader goals of these networks?
- ☐ What gives your organization standing to work effectively on this issue?
- ☐ What are your short-term and long-term policy goals?
- ☐ What is your (and your partners') policy strategy to achieve these goals?
- ☐ How do you engage and mobilize your constituents and other members of the community that are affected by or can influence this issue/policy?
- ☐ How do you build and maintain working relationships with relevant policymakers (e.g., legislators and their staff, administrators, etc.)



## Technical Knowledge and Skills

- ☐ Do you understand the IRS rules governing Section 501(c)(3) lobbying and reporting?
  - How do you track and monitor this?
  - How do you monitor compliance with these rules?
  - Has your organization, if a nonreligious public charity, elected to use the 501(h) expenditure test to provide a safe harbor for lobbying and simpler tracking and reporting of lobbying based only on expenditures?
- ☐ How do you assess and monitor the policy environment, opportunities, risks, threats and resource needs?
- ☐ What training does staff receive on policy issues, advocacy, lobbying, nonpartisan voter engagement, etc.?
- ☐ What is your knowledge of the policy issue and processes? This includes:
  - Policy change process
  - Issue expertise
  - Political knowledge and skills
  - Policy analysis and research
  - Community mobilization skills
  - Legal knowledge

- ☐ Do you have a media strategy and plan?
  - Which staff person is responsible for carrying out the media plan?
  - Have you developed clear messages and a communications plan to advance your advocacy agenda?

## Project Specific

- ☐ How was the project identified as a community need?
- ☐ What other organizations are also working on this issue? Are you planning on collaborating with them? If not, why? If so, in what way(s)?
- ☐ What policy options have been proposed for addressing this need, and what, if any, analysis have you done of possible support and opposition to different policy proposals?
- ☐ What are the risks associated with this project?
  - For the grantee
  - For the foundation
  - For your constituents
  - For other stakeholders
- ☐ What will our grant help you accomplish with respect to your advocacy plan?



## Additional Resources

Alliance for Justice. *Build Your Advocacy Grantmaking: Advocacy Capacity Assessment Tool*. 2005. See [www.afj.org](http://www.afj.org) for description and purchase information.

Avner, Marcia. *The Lobbying and Advocacy Handbook for Nonprofit Organizations: Shaping Public Policy at the State and Local Level*. St. Paul, Minn.: Fieldstone Alliance, 2002. <http://clpi.org/press-publications/publications-sale>

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# Success Stories



The following are just a few stories that exemplify how private foundations have empowered organizations and individuals to engage in public policy and advocacy. Their activities range from funding policy initiatives to legal efforts to nonpartisan voter engagement and education. They show the social rate of return and impact that consistent funding of advocacy and civic engagement can yield for underserved communities and causes.

## **ROBERT WOOD JOHNSON FOUNDATION'S ADVOCACY SUPPORT ASSISTED NORTH CAROLINA SENIORS WITH PRESCRIPTION COSTS**

The Robert Wood Johnson Foundation's (RWJF) Community Health Leadership Program (CHLP) Award honors community leaders with innovative approaches to health care. When Senior PharmAssist – an organization providing direct financial assistance and help with Medicare Part D to seniors in Durham County, N.C. – received the award, they used a portion of the grant for strategic planning and coaching. Recognizing the important role they could play as advocates, Senior PharmAssist joined with other advocates to influence the North Carolina Health and Wellness Trust and their leader, current Governor Bev Perdue, to provide almost \$20 million in grants for medication therapy management and patient assistance programs.

The RWJF Community Health Leadership Program advocacy grant was also used to co-host a statewide summit, where attendees formed the Advocates for a North Carolina Prescription Drug Assistance Program. In 2006, this broad-based coalition was able to push for the creation of two programs that help seniors with limited incomes pay their monthly prescription premiums and reimburse pharmacists for providing medication therapy management to Medicare beneficiaries.

## **GEORGE GUND FOUNDATION'S SUPPORT FOR CHILDREN'S LAW CENTER BROUGHT UNPRECEDENTED JUVENILE JUSTICE REFORMS IN OHIO**

The George Gund Foundation has been funding infrastructure support for public policy activities for well over a decade. Each year, the Foundation distributes more than \$2 million for such activities, including support for new or existing public policy staff positions. One organization, the Northern Kentucky Children's Law Center, is a prime example of the power of philanthropy's engagement in public policy.

The Gund Foundation first funded the Center seven years ago to research and investigate dangerous conditions at certain state juvenile detention facilities operated by the Ohio Department of Youth Services. This support led to the Center's filing a series of lawsuits against the state and subsequent litigation. A landmark federal court ruling in 2008 outlined a sweeping mandate to reform the state's juvenile justice system, including shifting to a more community-based model that requires evidence-based practices and new juvenile release and re-entry procedures. The Center is now monitoring and overseeing the court settlement while also working on accompanying legislation. Thanks to Gund's support, the Center has grown in its influence, expertise and understanding of the policy process.

The opportunity to drive reform and positive change through public policy is always changing, and nonprofits must have the flexibility to react to these opportunities. Providing capacity support for a broad range of public policy advocacy activities is critical to keeping nonprofits "at the table" when public policy is being crafted and promotes greater fulfillment of their mission. For the Center, advocacy is an essential priority; it complements its direct service and furthers achievement of its goals.





## OTTO BREMER FOUNDATION SUPPORTS NONPARTISAN VOTER PARTICIPATION TO EMPOWER NATIVE AMERICANS IN MINNESOTA

The Otto Bremer Foundation recognized the importance of supporting increased civic engagement by Native Americans in Minnesota and has provided general operating support since 2005. Native Americans only gained United States citizenship and the vote in 1924, and it was important that their voices be heard more in the policy process. In 2004, the first statewide Get Out the Native Vote (GOTNV) effort targeted at Native Americans was such a success that the Native Vote Alliance of Minnesota (NVAM) was created with the help of a three-year general support grant from Otto Bremer.

The campaign set out to educate all Native Americans in Minnesota on voter and civic engagement and election protection. They held nonpartisan candidate forums and voter registration drives at pow wows and community events. NVAM organized nonpartisan voter mobilization activities on eight of 11 reservations in the state, including door-to-door canvassing, voter registration drives, phone banks, election monitoring and rides to the polls. In total, more than 6,500 Native Americans residing on Indian reservations turned out to vote in 2008, including record numbers of registrants and high turnout in many precincts located on tribal lands. In addition, a Native American woman became an election judge in a township within the jurisdictional boundaries of the Leech Lake Band of Ojibwe – a Native-populated precinct that had long lacked a Native American election judge.

Using available online technology and reaching out to youth, NVAM continues to educate and mobilize Native people to engage in civic and policy activities in order to enhance their collective voice in important public policy decisions.



## Additional Resources

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# General Resources

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## FOUNDATIONS FOR CIVIC IMPACT

### Advocacy and Civic Engagement Toolkit for Private Foundations



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# Appendix A: Glossary of Key Terms

Language is a significant source of confusion for foundations, charities, policymakers and the public. For various reasons, different terms may be used to describe the same activities. Recognizing this limitation, this glossary is designed to provide simple and clear definitions for the most common terms foundation staff and board members encounter. Internal Revenue Service (IRS) definitions and descriptions are used where applicable.

## Organizational Terms

### Section 501(c)(3) organizations

Tax-exempt organizations described in Section 501(c)(3)<sup>22</sup> of the Internal Revenue Code must be operated “exclusively” for charitable purposes, and no net earnings may be used “to the benefit of any private shareholder or individual.” Both private foundations and public charities are Section 501(c)(3) organizations.

### Private Foundations

Defined by the IRS in the Tax Reform Act of 1969, **private foundations**<sup>23</sup> are Section 501(c)(3) organizations characterized by limited funding sources and limited public involvement. Most private foundations are grantmaking institutions with charitable endowments established from a single or handful of sources. Contributions to private foundations that are not made in exchange for goods and services are usually **tax-deductible** to donors.<sup>24</sup> Depending on the sources of their endowments, private foundations may be labeled as family foundations, corporate foundations or independent foundations (governing board of directors is not controlled by a primary benefactor).

### Public Charities

Public charities are Section 501(c)(3) tax-exempt organizations characterized by broader public, financial support and involvement than are private foundations. Contributions to public charities that are not made in exchange for goods and services are usually **tax-deductible** to donors.<sup>25</sup> The vast majority of private foundation grantees are public charities. Public charities are permitted to engage in more advocacy-related activities than are private foundations.

## Supporting Organizations

“**Supporting organizations**” are public charities that carry out their exempt purposes by having a specific relationship and activities that support other exempt organizations, usually other public charities such as hospitals, universities and community foundations. As noted in the toolkit, grants to supporting organizations from donor advised funds require special attention. See [www.cof.org/ppa](http://www.cof.org/ppa) for additional information.<sup>26</sup>

## Lobbying Terms Under IRS Rules

Because the general statutory description of lobbying for Section 501(c)(3) organizations uses sweeping language about restrictions on “propaganda” and “attempting to influence legislation,” it is understandable that many foundations and charities are confused and cautious about policy involvement and support.<sup>27</sup> However, the specific IRS lobbying rules for private foundations and charities permit a wide range of policy-related activities. This is why the language that private foundations use in guidelines, grant agreements and other communications is so important.

With a few exceptions, private foundations are not allowed to engage in “lobbying” as that term is defined by the IRS. Public charities, often foundation grantees, may engage in lobbying under IRS rules within certain limits.

### Direct Lobbying

As defined by the IRS in Section 501(h) and applied to private foundations, direct lobbying is any attempt to influence legislation through communication with a member or employee of a legislative body.<sup>28</sup> It also includes communication with the public if the legislation at issue is a ballot initiative or referendum

<sup>22</sup> [http://www.law.cornell.edu/uscode/26/usc\\_sec\\_26\\_00000501----000-.html](http://www.law.cornell.edu/uscode/26/usc_sec_26_00000501----000-.html)

<sup>23</sup> <http://www.irs.gov/charities/charitable/article/0,,id=96114,00.html>

<sup>24</sup> <http://www.irs.gov/pub/irs-pdf/p526.pdf>

<sup>25</sup> <http://www.irs.gov/pub/irs-pdf/p526.pdf>

<sup>26</sup> <http://classic.cof.org/Learn/content.cfm?ItemNumber=5336&navItemNumber=5337>

<sup>27</sup> [http://www.law.cornell.edu/uscode/26/usc\\_sec\\_26\\_00000501----000-.html](http://www.law.cornell.edu/uscode/26/usc_sec_26_00000501----000-.html)

<sup>28</sup> In limited circumstances, communication with a high-level administrative official about legislation also may be considered by the IRS as direct lobbying.



since the public essentially serves as the “legislators” in such circumstances. The communication must refer to a specific piece of legislation and reflect a view on such legislation to be considered direct lobbying.

### Grassroots Lobbying

Under Section 501(h), grassroots lobbying is defined as an attempt to influence legislation by encouraging the general public or any segment thereof to take action. A communication will be treated as grassroots lobbying if it refers to specific legislation, reflects a view on such legislation, and directly encourages the recipient of the communication to take action with respect to such legislation. Direct encouragement includes providing the names of legislators or contact information or a mechanism to contact legislators.

### Lobbying Exceptions for Private Foundations

Importantly, the private foundation regulations also define a number of specific exceptions to definitions of lobbying, including exceptions that permit private foundations to engage in unlimited nonpartisan analysis, study or research, and unlimited self-defense work. These exceptions are addressed elsewhere in this toolkit but should not be overlooked.

### Tests for Public Charity Lobbying

**Substantial Part Test:** Also referred to as the “insubstantial part test,” this 1934 test still serves as the default standard for all public charities and states that lobbying may not constitute a “substantial part” of a charity’s activities. In determining what is “substantial,” the IRS considers all relevant facts and circumstances, including the work of staff, board and volunteers, as well as a range of organizational activities from publications to speeches and mailings.<sup>29</sup> For more information on problems with the substantial part test, please visit [CLPI](http://www.clpi.org).<sup>30</sup>

**Expenditure or 501(h) Test:** In response to the vagueness and uncertainty of the 1934 substantial part test, in 1976 Congress enacted the expenditure test to provide a simple, objective alternative for nonchurch, public charities.<sup>31</sup> Such charities may elect (opt in) to determine and report permissible lobbying activity under the Section 501(h) expenditure test. Organizations can elect this test on the new 990 Form or by filing [Form 5768](http://www.irs.gov/pub/irs-pdf/f990sc.pdf) at any time during the tax year.

Under this alternative test, public charities need to focus only on their lobbying expenditures and ensure that they fall within the safe harbor expenditure limits. There is an overall annual cap of \$1 million in lobbying expenditures.<sup>32</sup> Charities must track their [direct and grassroots lobbying](#),<sup>33</sup> as grassroots lobbying may not exceed one-fourth of the total permissible lobbying limit. For more information on Section 501(h) and its advantages, please visit [CLPI](http://www.clpi.org)<sup>34</sup> and [Council on Foundations](http://www.councilonfoundations.org).<sup>35</sup>

### Lobbying Exceptions for Public Charities

The IRS regulations under the 501(h) expenditure test define a number of specific exceptions to lobbying restrictions for public charities. Such exceptions permit unlimited nonpartisan analysis, study or research, and unlimited self-defense work.<sup>36</sup> These exceptions are addressed elsewhere in this toolkit but should not be overlooked.

## Political Activities Under IRS Rules

As described in this toolkit, private foundations and public charities may engage in a wide range of nonpartisan election-related activities. Private foundations sometimes refer broadly to these permissible activities as voter education, voter engagement or civic engagement.

### Voter and Candidate Education

In order to create a more informed electorate, 501(c)(3) organizations may engage in a wide range of unlimited, nonpartisan activities to educate the public on how public officials stand on substantive policy issues of importance to organizational missions. Examples of such activities include candidate forums, guides, questionnaires and scorecards. So long as such activities are strictly nonpartisan, private foundations may provide unlimited grants for voter education activities, and foundation officials may participate in these activities directly.

Candidate education is where a foundation or charity informs all candidates about its policy positions in an effort to get the candidates to adopt or promote these positions.

29 See IRS Form 990, Schedule C, Part II-B, at <http://www.irs.gov/pub/irs-pdf/f990sc.pdf>

30 <http://www.clpi.org/protect-advocacy-rights/help-protect-your-rights>

31 At the time, some influential religious institutions moved out to be covered by the reforms in part so as not to set a precedent in terms of government regulation of religion.

32 The lobbying limits and overall cap were not indexed for inflation, and have lost about two-thirds of their value since 1976. The test also treats grassroots lobbying differently and less favorably than direct lobbying.

33 <http://www.clpi.org/images/pdf/DifferenceGrassroots&Direct.pdf>

34 <http://www.clpi.org/images/pdf/1976law.pdf>

35 <http://www.cof.org/templates/311.cfm?ItemNumber=16207&navItemNumber=14849>

36 The IRS has not made clear whether the 501(h) lobbying exceptions are applicable to public charities under the default substantial part test.



### Voter Engagement (including Voter Registration)

Voter engagement encourages increased citizen participation in elections through voter registration and get-out-the-vote activities. There are special rules for private foundations that engage in or fund voter registration activities. In addition to being nonpartisan, foundation involvement with voter registration must be carried out in at least five states and over more than one election cycle.

## General Nonprofit Terms for Advocacy and Civic Engagement

### Civic Engagement (also Civic Participation)

Civic engagement most often refers to the broadest range of activities that involve people in civic life in order to advance charitable or public purposes. Such activities include volunteering, public education, research, community organizing, lobbying, policy implementation, litigation and nonpartisan voter engagement. Some within the nonprofit sector use the term civic engagement more narrowly to describe permissible nonpartisan voter engagement activities.

### Advocacy (Public Policy)

Advocacy is often defined as a wide range of activities that seek to influence policy decisions by public or private actors. Thus, lobbying and nonpartisan voter engagement activities are subsets of advocacy. When just focused on educating or influencing government officials and actions, advocacy may be used interchangeably with the phrase “influencing public policy.” Because of its link to policy change, advocacy is sometimes defined more narrowly as involving systemic or institutional reform, as in social justice philanthropy (see below). For information on why organizations should advocate, please see [CLPI](http://www.clpi.org/why-advocacy).<sup>37</sup>

Some within the nonprofit sector use the term advocacy to modify different types of activities based on the locus of activity. Thus, legislative advocacy may be used to describe lobbying or policy development, administrative advocacy for policy implementation, judicial advocacy for litigation, and electoral advocacy for nonpartisan voter engagement.<sup>38</sup> Even in its broad use, advocacy normally does not include individual direct service-only activity. Many foundations and charities increasingly recognize the advantages and leverage of combining service and advocacy in their work.<sup>39</sup>

### Social Justice Philanthropy (also Social Change)

**Social justice grantmaking** has been defined as making charitable contributions to nonprofit organizations that work for structural change in order to increase the opportunity of those who are the least well-off politically, economically and socially.<sup>40</sup> Social justice philanthropy includes social justice grantmaking and adds the use of foundation investments and direct actions by foundation personnel toward these same ends.<sup>41</sup>

The term social change philanthropy is often used to describe foundation attempts to bring about systemic or institutional reform through organizing and policy. While some use the terms social change and social justice interchangeably, the latter generally focuses on systemic change for poor, marginalized, underserved or vulnerable populations.

### Community Organizing

This is the process of bringing people together, identifying issues and mobilizing them to act in the pursuit of a common self-interest. Community organizing often is distinguished from grassroots organizing, grassroots lobbying and grassroots advocacy by how and where decisions are made.<sup>42</sup>

## Legal Disclaimer

This toolkit provides helpful legal information and guidance, but should not be construed as providing specific legal advice. You should consult with your foundation’s legal counsel about specific activities or questions.

<sup>37</sup> <http://www.clpi.org/why-advocacy>

<sup>38</sup> <http://www.clpi.org/why-advocacy>

<sup>39</sup> See Crutchfield and Grant, *Forces for Good: The Six Practices of High-Impact Nonprofits* (Jossey-Bass 2008). The authors argue through research and examples that the highest-impact nonprofits combine service and advocacy in a “virtuous cycle.”

<sup>40</sup> <http://www.foundationcenter.org/gainknowledge/research/pdf/socialjustice.pdf>

<sup>41</sup> Korten, Alicia Epstein. *Change Philanthropy: Candid Stories of Foundations Maximizing Results Through Social Justice* (Sponsored by Center for Community Change and published by Jossey-Bass 2009).

<sup>42</sup> See the National Committee for Responsive Philanthropy’s *Grantmaking for Community Impact Project* and its definition and discussion of community organizing in reports from Los Angeles, Minnesota, New Mexico and North Carolina. <http://www.ncrp.org/campaigns-research-policy/communities/gcip>

## Appendix B: IRS Letter to CLPI on Foundations & Advocacy



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: **DEC 09 2004**

Charity Lobbying in the Public Interest  
2040 S Street NW  
Washington, DC 20009

Contact Person:  
Ward L. Thomas  
Identification Number:  
50-09822  
Contact Number:  
(202) 283-8913

Dear Sirs:

We have considered your request dated February 10, 2003 on behalf of a public charity involved in educating other charities about the role of lobbying as a means to achieving their philanthropic missions. You request information on lobbying and influencing public policy by private foundations. The public charity has compiled a list of recurring questions that, if answered by the IRS, would assist in correcting misconceptions in this area. The questions are addressed below.

1. May private foundations make general support grants, other than program-related investments, to “public charities” that lobby?

Yes, private foundations may make grants, other than program-related investments, to public charities (i.e., organizations described in sections 509 (a)(1), (2), or (3) of the Internal Revenue Code) that lobby, with restrictions. The tax rules include explicit safe harbors for general support grants that meet the requirements of sections 53.4945-2(a)(6)(i) of the Treasury Regulations. Provided that such grants are not earmarked in whole or part for lobbying, they will not be taxable expenditures.

2. Does the same answer apply whether or not the public charity has made the election under section 501(h) of the Code governing its own lobbying expenditures?

Yes.

3. What constitutes “earmarking” of a grant for lobbying?

“Earmarking” a grant for lobbying is making a grant with an oral or written agreement that the grant will be used for lobbying.

4. Absent any specific agreement to the contrary, will the recitation in a grant agreement that “there is no agreement, oral or written, that directs that the grant funds be used for lobbying activities” be sufficient to establish to the satisfaction of the IRS that there has been no earmarking for lobbying?

Yes, absent evidence of an agreement to the contrary.

5. Is a foundation required to include a specific provision in its grant agreements that no part of the grant funds may be used for lobbying?

A specific provision is required only if the grantee organization is not a public charity, or if the private foundation earmarks the grant for use by an organization that is not a public charity.





6. Under what circumstances can a foundation make a grant to a public charity for a specific project that includes lobbying?

A private foundation can make a grant to a public charity for a specific project that includes lobbying pursuant to sections 53.4945-2(a)(6)(ii) and (iii) of the regulations if (1) no part of the grant is earmarked for lobbying, (2) the private foundation obtains a proposed budget signed by an officer of the public charity showing that the amount of the grant, together with other grants by the same private foundation for the same project and year, does not exceed the amount budgeted, for the year of the grant, by the public charity for activities of the project that are not lobbying, and (3) the private foundation has no reason to doubt the accuracy of the budget.

7. In the response to the preceding question, does it matter that the public charity's proposal indicates that it will be seeking funds for the specific project from other private foundations without referring to other, additional sources of funds?

No, the specific project grant rules in section 53.4945-2(a)(6)(ii) of the regulations do not require the private foundation to concern itself about other sources of funding for the project in such situations.

8. What if, in the conduct of the project, the public charity actually makes lobbying expenditures in excess of its estimate in the grant proposal?

If the requirements in section 53.4945-2(a)(6)(ii) and (iii) of the regulations are met (no earmarking, budget shows non-lobbying equal to or greater than grant, and no reason to doubt accuracy of budget), then the private foundation will not have made a taxable expenditure under section 4945(d)(1) of the Code for that year, even if the public charity makes lobbying expenditures in excess of the budgeted amount. However, knowledge of the excess may provide a reason to doubt the accuracy of subsequent budgets submitted by the public charity.

Section 53.4945-2(a)(7)(ii) of the regulations, Example (13), illustrates the situation where a private foundation makes a second-year grant payment after the public charity exceeded its lobbying budgeted amount in the first year of the grant. In that case, although the private foundation did not have a taxable expenditure in the first year, it did have a taxable expenditure in the second year when the public charity again exceeded its lobbying budgeted amount. Similarly, if the public charity's exemption is revoked for excess lobbying after receiving the grant, there is no adverse consequence to the private foundation unless it directly or indirectly controls the public charity or has knowledge of the change in status before making the grant.

9. In determining whether a foundation grant has been earmarked for lobbying, do the definitions of lobbying in sections 56.4911-2 and 3 of the regulations govern?

Section 53.4945-2(a)(1) of the regulations provides that the definitions of section 56.4911-2 and section 56.4911-3 apply without regard to the exceptions contained in section 56.4911-2(b)(3) and section 56.4911-2(c). Instead, similar exceptions are provided in section 53.4945-2(d). Note that the special rules for membership communications under section 56.4911-5 do not apply to private foundations.

10. Private foundations are required to make "all reasonable efforts" under section 4945(h) of the Code to ensure that grant funds subject to expenditure responsibility (for example, a grant to a section 501(c)(4) organization) are not used for lobbying. Assuming grant records reflect that a grantee has been made aware of the applicable lobbying definitions and the grantee's report on the use of grant funds reflects activities that are legislation-related, but, as reported, lack one or more of the elements of lobbying under sections 53.4911-2 and 3 of the regulations, is the foundation required to investigate further to discharge its responsibilities?

Section 53.4945-5(c)(1) of the regulations provides that a grantor private foundation is not required to conduct any independent verification of reports from grantees unless it has reason to doubt their accuracy or reliability.

11. May private foundations directly engage in any policy-related activities without incurring liability for private foundation excise taxes?

Yes. Private foundations may engage directly in a wide range of educational activities that influence the formation of public policy but are not lobbying so long as the foundation does not (1) reflect a view on specific legislation in communications with legislators, legislative staff, or executive branch personnel participating in the formulation of legislation, or (2) reflect a view on specific legislation and make a call to action in communications with the general public (and the rule for certain "mass media" communications does not apply). Some communications that may otherwise qualify as lobbying are excepted as nonpartisan analysis, technical advice to a legislative body, or self-defense.



12. What other policy-related activities may foundations fund?

Private foundations may fund discussions of broad social problems, as well as certain public charity membership communications that are not treated as lobbying communications. Further, the special restrictions on lobbying have no effect on contact with executive branch officials in order to influence the development of regulations (and other non-legislative policy positions). "Lobbying" is limited to attempting to influence action by a legislative body.

13. May community foundations engage in or fund lobbying activities?

Community foundations that are public charities may, if they have elected under section 501(h) of the Code, engage in or fund lobbying activities subject to the limitations of section 501(h) and section 4911 or, if they have not, to the extent that the lobbying activity does not constitute more than an insubstantial part of the community foundation's activities.

14. May community foundations make grants to other public charities that are earmarked for lobbying without adverse federal tax consequences?

Community foundations that are public charities may make grants to other public charities earmarked for lobbying so long as the amounts actually earmarked for lobbying are taken into account under the applicable limitation on lobbying expenditures by the community foundation notes in the response to Question 13.

15. May community foundations engage in nonpartisan election-related activities (activities that do not constitute political campaign intervention within the meaning of section 501(c)(3)-1(c)(3)(iii) of the regulations) including voter registration, "Get Out the Vote" drives, voter education projects and candidate forums?

Community foundations may engage in non-partisan election-related activities such as voter registration, "Get Out the Vote" drives, voter education projects and candidate forums, provided they do not constitute political campaign intervention under section 501(c)(3) of the Code. Regarding voter registration activities in particular, community foundations that are not private foundations are not required to meet the standards of section 4945(f).

16. In contrast to public charities, private foundations are subject to limitations under section 4345(d)(2) of the Code on funding nonpartisan "voter registration drives." For purposes of the limitations, does the phrase "voter registration drive" include non-partisan election-related activities other than registering voters, including "Get Out the Vote" activities, voter education projects and candidate forums?

No.

We believe this general information will be of assistance to you. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please feel free to contact the person whose name and telephone number are listed in the heading of this letter.

Sincerely,

Joseph J. Urban  
Manager, Exempt Organizations  
Technical Guidance & Quality Assurance

cc: Thomas A. Troyer  
Marcus S. Owens  
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